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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 GEORGE WILLIAMS,
11 Petitioner,

12 v.

13 UNITED STATES OF AMERICA,
14 Respondent.

Case No. C08-5306FDB

ORDER DENYING PETITION
PURSUANT TO 28 U.S.C. 2255

15 Petitioner Williams was indicted for being a felon in possession of a firearm and ammunition;
16 the indictment included notice that Petitioner faced Armed Career Criminal penalty provisions. The
17 undersigned took the plea on stipulated facts at a hearing where Petitioner was represented by
18 Attorney Anthony Savage. Following the plea, Petitioner became unhappy with his representation
19 because he took issue with his being an Armed Career Criminal and fired Anthony Savage; then he
20 fired Attorney Karen Unger with respect to the Armed Career Criminal issue. Then Petitioner tried
21 to get Paula Olson to renegotiate his plea without his having to give up the security of facing only a
22 10-year sentence, as agreed to in his 11 (c)(1)(C) agreement, as he faced a minimum of 15 years
23 without the plea. The United States opposed this attempt arguing that Williams had a choice: either
24 move to withdraw his plea (and then renegotiate), or proceed with his sentencing; at the same time,
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1 the United States provided authority rebutting his Armed Career Criminal argument (that two of his
2 convictions for violent felonies had been for “attempted” crimes, and that he did not qualify as an
3 Armed Career Criminal).

4 On the day of sentencing, October 18, 2007, Williams asked his new lawyer to withdraw his
5 Armed Career Criminal Motion and to proceed with sentencing pursuant to his plea agreement. The
6 Court questioned Williams on whether he truly wished to withdraw his motion and proceed with
7 sentencing, and the Court also questioned Williams about the pain medication he was taking, but he
8 assured the Court that the medication was not affecting his thought processes and that he was ready
9 for sentencing.

10 Petitioner Williams brings this 2255 petition arguing ineffective assistance of counsel in that
11 (1) counsel failed to file a motion to predetermine his status as an Armed Career Criminal; (2) for
12 failing to move for a competency hearing before being allowed to enter his plea; and (3) for failing to
13 correct the defendant when he told the court that he was not under the influence of prescription
14 drugs.

15 To establish a claim of ineffective assistance of counsel, Petitioner must show both that his
16 counsel was deficient and that he was prejudiced by the alleged deficiency. *Strickland v.*
17 *Washington*, 466 U.S. 668 (1984).


18 Petitioner Williams has failed to establish ineffective assistance of counsel. As to the Armed
19 Career Criminal issue, under Fed. R. Crim. P. 11, it is required that he first withdraw his plea if he
20 wanted a court ruling on his status as an Armed Career Criminal. Once the United States produced
21 authority show that Petitioner was indeed a career criminal, Petitioner withdrew his motion.
22 Petitioner made his decisions throughout the process from plea to sentence: he decided to plead
23 guilty, his decided to file the Armed Career Criminal Motion and to withdraw it, he decided not to
24 withdraw his plea, and he decided to accept the deal negotiated by Anthony Savage. The Court
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1 concludes that none of Petitioners lawyers performed deficiently as to the Armed Career Criminal
2 issue.

3 On the competence issue, Williams contends that Attorney Savage should have moved to
4 have his competence determined. This argument presumes Williams was incompetent. While it is
5 noted that Williams might have been obstreperous, this in itself does not indicate incompetence and
6 neither does violent criminal behavior by itself. The Court cannot conclude that Williams' behavior
7 should have suggested to his legal counsel that he was incompetent. Williams had a marked
8 stubbornness as to the Armed Career Criminal issue and an understanding of an earlier argument
9 made on that issue. Petitioner wrote a coherent letter to the Court asking for leniency, he spoke
10 about his behavior at the detention center and apologized for it. The record also reveals that he fully
11 understood the events leading up to his plea. Under all the circumstances revealed in the record, the
12 Court cannot conclude that Williams was incompetent and that his legal counsel was ineffective in
13 failing to move to have Williams competency determined.

14 NOW, THEREFORE, IT IS ORDERED: Petitioner Williams Motion pursuant to 28 U.S.C.
15 2255 is DENIED.

16 DATED this 11th day of August, 2008.

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19 FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE